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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/16/2001

Steven Curtis Zicker

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06/24/2008

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EXAMINER

VAKILI, ZOHREH

ART UNIT

PAPER NUMBER

1614

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/978,127	<b>Applicant(s)</b> ZICKER ET AL.	
	<b>Examiner</b> ZOHREH VAKILI	<b>Art Unit</b> 1614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 39 and 44-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39 and 44-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

#### **Claims 39, 44-47 are presented for examination.**

A request for continued examination under 37 C.F.R. 1.114, including the fee set forth in 37 C.F.R. 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 C.F.R. 1.114, and the fee set forth in 37 C.F.R. 1.17(e) has been timely paid, the finality of the previous Office Action has been withdrawn pursuant to 37 C.F.R. 1.114. Applicant's submission filed June 4, 2008 has been received and entered into the present application. Claims 39, 44-47 are pending and are herein examined on the merits.

Applicants' Declaration filed on June 4, 2008 has been received but is not persuasive due to the missing signature of the co-inventor.

#### ***Claim Rejection(s)—35 USC 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

Art Unit: 1614

were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 39, 44-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harper WO 00/44375 ('375) in view of Hamilton 6,335,361 (both references already of record).

Harper teaches a method for overcoming the problem of oxidative stress in a companion animal such as a dog or cat by increasing the plasma Vitamin E levels in the cat or dog. Specifically, a diet containing Vitamin C and Vitamin E are fed to senior (6.5-12.5 years of age) dogs. Harper discloses that such a vitamin "cocktail" will prevent or treat a disorder (aging), which has a component of oxidative stress. Additionally, Harper teaches a method of feeding vitamin E separately to the companion animal in order to increase the Vitamin E levels in the plasma thereby overcoming the problem of oxidative stress. Please see the abstract, page 1, lines 18-21; page 13, line 12; page 16, lines 20-23; Example 19, pages 47-48.

Harper does not teach adding antioxidants such as alpha lipoic acid or l-carnitine or mixtures thereof. Yet, the Examiner refers to Hamilton, which discloses a method of treating cognition disorders associated with aging. Specifically, the method involves administering an effective amount of a combination of the antioxidants carnitine and  $\alpha$ -lipoic acid. A preferred form of carnitine is acetyl-L- carnitine and R- $\alpha$ -lipoic acid.

Art Unit: 1614

Moreover, Hamilton teaches that the combination of antioxidants may be added to pet food for administration to animals such as cats, dogs, horses, birds and fish. The combination of antioxidants serves to inhibit age-related memory loss and provide improved memory in older subjects. The combination of antioxidants contributes to the improvement of mental acuity. Finally, Hamilton discloses that additional nutrients such as vitamin E or C should be included as they are particularly important in older subjects. Please see col. 6, lines 44-60; col. 7, lines 14- 17; col. 8, lines 8-13; col. 10, lines 9-21.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the method of Harper to specifically administer to the aged dog or cat Vitamin E, C in combination with l-carnitine and  $\alpha$ -lipoic acid because one of ordinary skill in the art would reasonably expect the combination of these anti-oxidant compounds to inhibit oxidative stress associated with aging. Moreover, since Hamilton discloses a method of improving memory in older pets as well as a method of treating cognitive disorders (e.g. age-related memory loss) by administering carnitine and  $\alpha$ -lipoic acid, one of ordinary skill in the art would reasonably expect the combination of anti-oxidants not only to inhibit oxidative stress associated with aging but also to counteract age-related memory loss and improve mental acuity in the aged cats and dogs taught of Harper. Finally, even Hamilton suggests that additional administration of vitamin E or C would serve to enhance the treatment process by teaching that these anti-oxidants are particularly important in older subjects and should be included in the diet.

Concerning the claimed dosage amounts, since Hamilton and Harper establish that effective amounts, i.e. dosage amounts, are necessary to the treatment of disorders/symptoms associated with aging and oxidative stress, it would have been obvious to one of ordinary skill in the art at the time the invention was made to further modify the effective amounts of Hamilton and Harper such that the dosage amounts of the carnitine, vitamin E, vitamin C and alpha-lipoic acid are effective to inhibit oxidative stress or symptoms associated with aging in animals, thereby improving mental acuity and inhibiting age-related memory loss.

### **Conclusion**

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zohreh Vakili whose telephone number is 571-272-3099. The examiner can normally be reached on 8:30-5:00 Mon.-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ardin Marschel, can be reached on 571-272-0718. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you

Art Unit: 1614

have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Zohreh Vakili

Patent Examiner  
1614

June 19, 2008

/Ardin Marschel/

Supervisory Patent Examiner, Art Unit 1614